

1 Michael J. Farrell - 015056

mfarrell@bfazlaw.com

2 **BEYERS FARRELL PLLC**

99 East Virginia Ave., Ste. 220

3 Phoenix, AZ 85004-1195

Tel. (602) 603-1442

4 David W. Affeld, CA SBN 123922

5 (*Pro Hac Vice Application Forthcoming*)

dwa@agzlaw.com

6 **AFFELD GRIVAKES LLP**

2049 Century Park East, Suite 2460

7 Los Angeles, California 90067

Tel.:(310) 979-8700

8 *Attorneys for Plaintiff, Sara Do*

9

10 **UNITED STATES DISTRICT COURT**

11

12 **DISTRICT OF ARIZONA**

13

14 Sara Do, an individual,

15 Plaintiff,

16

17 vs.

18 Arizona State University; Arizona Board of
19 Regents, an Arizona State Entity;
20 Valleywise Health; Valleywise Health
Medical Center; Dr. Kimberly Day, an
unmarried person; Dr. Salina Bednarek and
Joshua Bednarek, wife and husband; Dr.
Margaret Morris and Phillip Morris, wife
and husband; Candace Keck and Jonathan
Keck, wife and husband,

21

22 Defendants.

23

24

25

26

27

28

Case No.:

COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff, Sara Do (“Do” or “Plaintiff”), an individual, alleges against Defendants
2 Arizona State University, Arizona Board of Regents (collectively with Arizona State
3 University, “ASU”), Valleywise Health Medical Center (“Valleywise”), Dr. Kimberly Day
4 (“Day”), Dr. Salina Bednarek (“Bednarek”), Dr. Margaret Morris (“Morris”), and Professor
5 Candace Keck (“Keck”) (collectively, “Defendants”) as follows:

6 **I. INTRODUCTION**

7 1. After putting Sara Do directly in harm’s way by mandating that she get a
8 COVID-19 vaccination, with rare but known risks, ASU abandoned, and ultimately discarded,
9 her when that vaccination caused near-fatal and likely permanent damage to her heart,
10 constructively forcing her out of its nursing program and dashing her hopes of becoming a
11 nurse. This is an action seeking economic and punitive damages and injunctive relief in order
12 to correct the injustice and unfair and illegal treatment Sara Do has suffered at the hands of
13 Defendants—stitutions and individuals who were supposed to protect her.

14 2. Prior to the devastating reaction to the vaccine, Do was an exceptional student,
15 graduating from ASU *summa cum laude* with a **4.06 GPA**. Following a few years off to care
16 for her young children, she returned to ASU to pursue a Master of Science in Nursing Degree
17 (“Master’s”) in 2020. She again maintained a perfect GPA, until the Summer of 2021, when
18 she was given a failing grade and effectively, and wrongfully, dismissed from the ASU
19 program.

20 3. As part of the nursing program, ASU required Do to be vaccinated against
21 COVID-19. This was to minimize the risk of harm to her and to patients during her
22 clinical/experiential classes. ASU was aware when it mandated vaccination that Do, like any
23 other recipient, faced small and known, but non-negligible risks of severe health
24 complications, including potential cardiac injury.

25 4. Like many businesses and institutions attempting to straddle a difficult line,
26 ASU issued statements and declarations asserting that getting the vaccine was “voluntary”.
27 But for ASU nursing students, getting the vaccine was anything but voluntary. Do and her
28 fellow students were expressly told that they would have to be fully-vaccinated in order to

1 complete their required clinicals and the program. Do understood that ASU was mandating
2 her to get the vaccine and she complied with those directives.

3 5. On December 28, 2020, while sitting in a car with her father, Do received her
4 first and only shot of the Pfizer COVID-19 vaccine. Immediately upon receiving that shot, Do
5 suffered a severe adverse cardiac reaction, resulting in serious, episodic cardiac arrhythmia,
6 often inclusive of tachycardiac ventricular bigeminy. In simpler language, this means that,
7 when her condition is activated, Do experiences an excessively rapid heartbeat; she will have
8 one normal heartbeat followed by an abnormal heartbeat, a terrifying condition that causes Do
9 to feel lightheaded and faint. Due to the abnormal heart rhythm, her body is not effectively
10 perfused with oxygen. Without a risky heart surgery, this is likely a permanent condition. Do
11 was rushed in an ambulance from the vaccination site directly to an acute care hospital, where
12 she was stabilized. Her life would never be the same again.

13 6. As a hardworking student and single mother dedicated to supporting her family,
14 Do was determined not to let this incident and resulting damage to her heart stop her from
15 realizing her dream of becoming a nurse. She made ASU aware of her heart condition, which
16 formally recognized Do's disability. Consistent with longstanding legal requirements, ASU,
17 for a time, agreed to give her reasonable accommodations. But that would soon change.

18 7. During Spring Semester 2021, little by little ASU reneged on its promises of
19 reasonable accommodations—mandated by law—and instead began to force Do out of the
20 program. ASU, acting by and through its faculty and administration, began to create additional
21 barriers and challenges to Do's academic career, apparently in response to her disability, which
22 it did not impose on other students. Do was wrongfully singled out for this treatment.

23 8. As a result of her condition, Do is under doctor's orders not to drive, one of
24 many daily tasks that she can no longer perform alone. Despite this, ASU required her to be
25 physically present on the campus despite the pandemic. Wanting to comply, Do attempted to
26 go to campus to complete her requirements. She suffered a cardiac episode while taking an
27 exam on campus, and was again sent to the emergency room.

28

1 9. As a result of that scary episode, Do missed two days of her clinical rotation. Do
2 was told that she could submit written assignments to make up for 24-hours' worth of those
3 missed days. Four-days before these assignments were due—and after Do had completed most
4 of them—ASU told Do that they would no longer accept the work after all. Frustrated, but still
5 committed to her dream of becoming a nurse, she did not complain.

6 10. ASU assigned Do to clinical shifts at Valleywise Health Medical Center—a
7 Level I Trauma Center. One of Do's classmates, who also had an absence from the same
8 clinical, was assigned to classroom training for Advanced Cardiac Life Support ("ACLS"). Do
9 was originally assigned to a 3-hour burn victim surgery, in an operating room which is kept at
10 a temperature of over 100 degrees for the patient's safety and well-being. She expressed
11 concern that the high temperature and extended surgical time might aggravate her condition,
12 and that she would not have easy access to her medication to control her arrhythmias. She also
13 reaffirmed that despite her concerns, she was willing to do what she was told. In response, the
14 ASU professor on site, Dr. Day (who spent a collective 5-minutes with Do), wrote a nine-page,
15 negative evaluation asserting that Do had complained about the operating room being too
16 warm. Dr. Day is an employee of both ASU and Valleywise and her knowledge is imputed to
17 each. Dr. Day's evaluation was knowingly and intentionally false and defamatory.

18 11. Dr. Day next assigned Do's supervision to another Valleywise staff member,
19 where she observed the surgery of a victim of a gruesome car accident. Do did her best to
20 complete the assignment, but began experiencing arrhythmias due to the horrifying nature of
21 this situation, where the patient had been "de-gloved" in the accident. Because of the extreme
22 seriousness of the injury and the fact that blood and surgical fluids were literally spurting on
23 the floor such that other hospital personnel were throwing towels on the floor to catch them,
24 Do began to experience another heart episode. After twice giving notice to her on-site
25 supervisors, and acting in the best interests of the patient, Do left the operating room and
26 subsequently the facility.

27 12. In a false and defamatory written evaluation related to this incident, ASU and
28 Dr. Day falsely alleged that Do: (i) abandoned her clinical assignments without notice or

1 explanation; (ii) stated that she merely wanted the Master's in order to be an administrator;
 2 (iii) was disinterested in her assignments; and (iv) did not meet required objectives while
 3 making up her clinical hours. ***None of these statements were true***, and ASU, its faculty and
 4 personnel are well aware of these falsehoods. Yet, on the basis of this sham evaluation, Do
 5 was constructively expelled from the Master's program and given a failing grade for the
 6 clinical course, an unwarranted stain on her academic record that will continue to cause
 7 considerable harm well into the future. Prior to the 4-hour shift at Valleywise, Do had earned
 8 a 100% grade in this class in which she was subsequently failed. Defendants Keck, Bednarek,
 9 and Morris also participated in the creation and publication of the false and defamatory
 10 evaluation.

11 13. As a direct result of actions taken by ASU, Valleywise, and their agents, Do has
 12 suffered (i) extreme emotional distress; (ii) immediate and long-term reputational harm; and
 13 (iii) the loss of a salary of between \$150,000 and \$300,000 per year that she expected to earn
 14 with her Master's degrees. She is entitled to significant economic damages, punitive and
 15 exemplary damages, and injunctive relief to correct this miscarriage of justice.

16 **II. JURISDICTION AND VENUE**

17 14. This Court has subject matter jurisdiction over this action because (i) it has
 18 original jurisdiction under 28 U.S.C. § 1331 in that the First, Second, Third, and Sixth Claims
 19 arise under the Constitution, laws, or treaties of the United States and (ii) it has supplemental
 20 jurisdiction under 28 U.S.C. § 1337 because the remaining Causes of Action in the Complaint
 21 are so related to the First, Second, Third, and Sixth Causes of Action that they form part of the
 22 same case or controversy under Article III of the United States Constitution.

23 15. Venue is proper in this District under 28 U.S.C. § 1331 because a substantial part
 24 of the events or omissions giving rise to the claims occurred in this District.

25 **III. PARTIES**

26 16. Do is an individual and a resident of Phoenix, Arizona. Do was a student at ASU
 27 from 2014-2016, during which time she earned her undergraduate degree in Family and
 28 Human Development, and in 2020-2021 when she was in the process of earning her Master of

1 Science in Nursing degree.

2 17. Defendant Arizona State University is an Arizona public research university
3 located in Tempe, Arizona, which maintains several campuses in the greater Phoenix
4 metropolitan area.

5 18. Defendant Arizona Board of Regents is the governing body of Arizona's public
6 university system, which has jurisdiction and control over ASU.

7 19. Defendant Valleywise Health is a healthcare organization with multiple facilities
8 throughout Phoenix and the State of Arizona.

9 20. Defendant Valleywise Health Medical Center is a hospital owned and operated
10 by Valleywise Health. It is located in Phoenix and contains various specialty clinics and
11 departments.

12 21. Defendant Dr. Kimberly Day is an individual and a resident of Phoenix, Arizona.
13 Dr. Day is employed by and affiliated with both ASU and Valleywise Health. She acts as a
14 member of the ASU faculty and as a clinical advisor for Valleywise Health. Dr. Day is
15 substantially responsible for many of the acts complained about herein.

16 22. Defendant Dr. Margaret Morris is an individual and a resident of Phoenix,
17 Arizona. Dr. Morris is employed by ASU and is substantially responsible for many of the acts
18 complained about herein. Defendant Phillip Morris is an individual and a resident of Phoenix,
19 Arizona. At all relevant times, Defendant Phillip Morris and Defendant Dr. Margaret Morris
20 were married, and the actions of Dr. Margaret Morris were taken in furtherance of their marital
21 community.

22 23. Defendant Dr. Salina Bednarek is an individual and a resident of Phoenix,
23 Arizona. Dr. Bednarek is employed by ASU and is substantially responsible for many of the
24 acts complained about herein. Defendant Joshua Bednarek is an individual and a resident of
25 Phoenix, Arizona. At all relevant times, Defendant Joshua Bednarek and Defendant Dr. Salina
26 Bednarek were married, and the actions of Dr. Salina Bednarek were taken in furtherance of
27 their marital community.

28 24. Defendant Professor Candace Keck is an individual and a resident of Phoenix,

1 Arizona. Professor Keck is employed by ASU and is substantially responsible for many of the
2 acts complained about herein. Defendant Jonathan Keck is an individual and a resident of
3 Phoenix, Arizona. At all relevant times, Defendant Jonathan Keck and Defendant Candace
4 Keck were married, and the actions of Candace Keck were taken in furtherance of their marital
5 community.

6 **IV. COMPLIANCE WITH ARIZ. REV. STAT. ANN. § 12-821.01**

7 25. Defendant ASU is a public entity or public school within the meaning of Ariz.
8 Rev. Stat. Ann. § 12-821.01. Pursuant to Ariz. Rev. Stat. Ann. § 12-821.01 and in compliance
9 therewith, notice of Plaintiff's claim, including facts sufficient to understand the basis on
10 which liability is claimed, a specific amount for which the claim can be settled, and facts
11 supporting that amount, was filed by service upon the person or persons authorized to accept
12 service for Defendant ASU as set forth in the Arizona rules of civil procedure on November
13 10, 2021, which was within one-hundred eighty days of when each cause of action alleged
14 herein accrued. Pursuant to Ariz. Rev. Stat. Ann. § 12-821.01(E), this claim was deemed
15 denied sixty days after the filing because it was not accepted at any time and Plaintiff was not
16 advised of a denial in writing before the expiration of sixty days after the filing.

17 26. Defendant Dr. Kimberly Day is a public employee within the meaning of Ariz.
18 Rev. Stat. Ann. § 12-821.01. Pursuant to Ariz. Rev. Stat. Ann. § 12-821.01 and in compliance
19 therewith, notice of Plaintiff's claim, including facts sufficient to understand the basis on
20 which liability is claimed, a specific amount for which the claim can be settled, and facts
21 supporting that amount, was filed by service upon the person or persons authorized to accept
22 service for Defendant Day as set forth in the Arizona rules of civil procedure on November
23 30, 2021, which was within one-hundred eighty days of when each cause of action alleged
24 herein accrued. Pursuant to Ariz. Rev. Stat. Ann. § 12-821.01(E), this claim was deemed
25 denied sixty days after the filing because it was not accepted at any time and Plaintiff was not
26 advised of a denial in writing before the expiration of sixty days after the filing.

27 27. Defendant Dr. Margaret Morris is a public employee within the meaning of Ariz.
28 Rev. Stat. Ann. § 12-821.01. Pursuant to Ariz. Rev. Stat. Ann. § 12-821.01 and in compliance

1 therewith, notice of Plaintiff's claim, including facts sufficient to understand the basis on
2 which liability is claimed, a specific amount for which the claim can be settled, and facts
3 supporting that amount, was filed by service upon the person or persons authorized to accept
4 service for Defendant Morris as set forth in the Arizona rules of civil procedure on November
5 16, 2021, which was within one-hundred eighty days of when each cause of action alleged
6 herein accrued. Pursuant to Ariz. Rev. Stat. Ann. § 12-821.01(E), this claim was deemed
7 denied sixty days after the filing because it was not accepted at any time and Plaintiff was not
8 advised of a denial in writing before the expiration of sixty days after the filing.

9 28. Defendant Dr. Salina Bednarek is a public employee within the meaning of Ariz.
10 Rev. Stat. Ann. § 12-821.01. Pursuant to Ariz. Rev. Stat. Ann. § 12-821.01 and in compliance
11 therewith, notice of Plaintiff's claim, including facts sufficient to understand the basis on
12 which liability is claimed, a specific amount for which the claim can be settled, and facts
13 supporting that amount, was filed by service upon the person or persons authorized to accept
14 service for Defendant Bednarek as set forth in the Arizona rules of civil procedure on
15 November 16, 2021, which was within one-hundred eighty days of when each cause of action
16 alleged herein accrued. Pursuant to Ariz. Rev. Stat. Ann. § 12-821.01(E), this claim was
17 deemed denied sixty days after the filing because it was not accepted at any time and Plaintiff
18 was not advised of a denial in writing before the expiration of sixty days after the filing.

19 29. Defendant Dr. Candace Keck is a public employee within the meaning of Ariz.
20 Rev. Stat. Ann. § 12-821.01. Pursuant to Ariz. Rev. Stat. Ann. § 12-821.01 and in compliance
21 therewith, notice of Plaintiff's claim, including facts sufficient to understand the basis on
22 which liability is claimed, a specific amount for which the claim can be settled, and facts
23 supporting that amount, was filed by service upon the person or persons authorized to accept
24 service for Defendant Keck as set forth in the Arizona rules of civil procedure on November
25 17, 2021, which was within one-hundred eighty days of when each cause of action alleged
26 herein accrued. Pursuant to Ariz. Rev. Stat. Ann. § 12-821.01(E), this claim was deemed
27 denied sixty days after the filing because it was not accepted at any time and Plaintiff was not
28 advised of a denial in writing before the expiration of sixty days after the filing.

1 30. Defendant Valleywise Health Medical Center is a public entity within the
2 meaning of Ariz. Rev. Stat. Ann. § 12-821.01. Pursuant to Ariz. Rev. Stat. Ann. § 12-821.01
3 and in compliance therewith, notice of Plaintiff's claim, including facts sufficient to
4 understand the basis on which liability is claimed, a specific amount for which the claim can
5 be settled, and facts supporting that amount, was filed by service upon the person or persons
6 authorized to accept service for Defendant Valleywise Medical Center as set forth in the
7 Arizona rules of civil procedure on November 15, 2021, which was within one-hundred eighty
8 days of when each cause of action alleged herein accrued. Pursuant to Ariz. Rev. Stat. Ann. §
9 12-821.01(E), this claim was deemed denied sixty days after the filing because it was not
10 accepted at any time and Plaintiff was not advised of a denial in writing before the expiration
11 of sixty days after the filing.

12 31. Defendant Valleywise Health, formerly known as Maricopa Integrated Health
13 System, is a public entity within the meaning of Arizona covered by Ariz. Rev. Stat. Ann. §
14 12-821.01. Pursuant to Ariz. Rev. Stat. Ann. § 12-821.01 and in compliance therewith, notice
15 of Plaintiff's claim, including facts sufficient to understand the basis on which liability is
16 claimed, a specific amount for which the claim can be settled, and facts supporting that amount,
17 was filed by service upon the person or persons authorized to accept service for Defendant
18 Valleywise Health as set forth in the Arizona rules of civil procedure on November 15, 2021,
19 which was within one-hundred eighty days of when each cause of action alleged herein
20 accrued. Pursuant to Ariz. Rev. Stat. Ann. § 12-821.01(E), this claim was deemed denied sixty
21 days after the filing because it was not accepted at any time and Plaintiff was not advised of a
22 denial in writing before the expiration of sixty days after the filing.

23 **V. FACTUAL ALLEGATIONS**

24 32. As part of her nursing program, ASU required Do to be vaccinated against
25 COVID-19. This was to minimize the risk of harm to her and patients during her
26 clinical/experiential classes. ASU was aware at all relevant times of the small, but meaningful,
27 risk to Do and other students of dangerous side effects of COVID-19 vaccination. For ASU
28 nursing students, getting the vaccine was anything but voluntary. Do and her fellow students

1 were expressly told that they would have to be fully-vaccinated in order to complete their
2 required clinicals and, subsequently, graduate from the program. Do reasonably understood
3 that ASU was mandating her to get the vaccine and she complied with those directives.

4 33. On December 28, 2020, while sitting in a car with her father, Do received her
5 first shot of COVID-19 vaccine, and suffered an immediate, severe adverse reaction, including
6 atrial fibrillation, and then ventricular tachycardia (a potentially fatal arrhythmia). Do suffers
7 serious, episodic cardiac arrhythmia, often inclusive of tachycardiac ventricular bigeminy. In
8 short, when her condition is activated, Do has an excessively rapid heartbeat where she
9 experiences one normal heartbeat followed by an abnormal heartbeat; a terrifying condition
10 that has fundamentally altered Do's life.

11 34. Ordinary life activities, such as getting ready in the morning, driving a car, or
12 visiting her family have become difficult or impossible. Since receiving the COVID vaccine,
13 she has completely eliminated her consumption of caffeine for fear the elevation to her heart
14 rate will cause an episode. Do cannot even enjoy a simple cup of coffee in the mornings;
15 something that she used to enjoy daily. Do is under strict doctor's orders not to drive, as the
16 sudden onset of her arrhythmias renders it unsafe. Even being a passenger in a vehicle can be
17 enough to trigger cardiac problems. Do can no longer fly on an airplane, so she cannot easily
18 visit family members out of state. She travels with an EKG monitor at all times, and lives in a
19 state of constant anxiety. Upon awakening, her first task is to check her heart. Simply stated,
20 Do's life has been turned upside down as a result of the damage to her heart.

21 35. While she is on heart medication to attempt to control her symptoms, the
22 medication is not always effective. She sees three electrophysiology cardiologists regularly,
23 and they believe her only other option to attempt to control the symptoms is a risky surgery,
24 which would leave permanent scarring on her heart.

25 36. Do's long-term aspirations included actively treating patients as a nurse and also
26 advocating on behalf of other nurses. After completing her Master of Science in Nursing from
27 ASU, Do intended to pursue a second Master's degree in Executive Healthcare Administration
28 with the goal of ultimately becoming a Chief Nursing Officer. During the COVID Pandemic,

1 Do observed ways in which nurses, and their safety and health, were put at risk and often
 2 minimized. Along with treating and attending to patients, she also wanted to work with
 3 administrators to improve the health, safety, effectiveness, and ultimately happiness, of fellow
 4 nurses.

5 37. As a hardworking student and single mother determined to support her family,
 6 Do did not want to let the COVID-19 shot reaction stand in the way of earning her Master's
 7 degree. She made ASU aware of her heart condition, and through its Student Accessibility and
 8 Inclusive Learning Services Center, ASU formally recognized Do's disability.

9 38. ASU agreed to give her reasonable accommodations, and initially did work with
 10 her to accommodate her disability. Accommodations provided included allowing Do to attend
 11 classes virtually. During Spring Semester 2021, after her disability developed and worsened,
 12 Do continued to excel in her classes, due, in part, to the reasonable accommodations that ASU
 13 initially gave her.

14 39. As Spring turned to Summer, ASU began to renege on its promises of reasonable
 15 accommodations and to single Do out on the basis of her disability. As she became more
 16 concerned about her ability to satisfy the course requirements at the level to which she was
 17 accustomed, Do spoke with two ASU professors, including Defendant Dr. Bednarek. During
 18 that discussion, in which Do repeated numerous times, without challenge, that ASU had
 19 mandated the vaccine, Dr. Bednarek suggested that Do might be able to take a grade of
 20 "incomplete" for the course, which would allow her to avoid having to restart the course and,
 21 instead, to pick up from that point and finish once her health stabilized.¹ Later, without
 22 explanation or justification, Defendants refused to honor that offer and declined to allow Do
 23 to take an incomplete.

24 40. ASU originally allowed Do flexibility in attending classes and taking exams
 25 remotely due to her recognized disability and the ongoing pandemic. During Summer 2021,
 26 however, senior staff of the nursing school informed her that she must now perform all

27 ¹ Do is able to provide quotes from various meetings with ASU and Valleywise personnel
 28 because she recorded these meetings. These recordings, made pursuant to Arizona's "one-
 party consent law", are powerful evidence of Defendants' intentional wrongdoing.

1 requirements of the program in person. As a result of her condition, Do is under doctor's orders
2 not to drive herself and sometimes she is unable to ride safely in a car even as a passenger.
3 Still, wanting to comply with ASU and realize her dream of becoming a nurse, Do attempted
4 to go to campus to complete her requirements.

5 41. While taking an exam on the ASU campus the day before her clinical
6 assignment, Do experienced a severe cardiac episode and was forced to go to the hospital.
7 Although she was not formally admitted to the hospital, she was kept there under observation
8 and treated well into the night before she was finally allowed to return home.

9 42. As a direct result of this severe, days-long bout of acute arrhythmia, Do missed
10 two bedside clinical shifts. As an accommodation, Professor Keck, another ASU professor,
11 offered Do twenty-four hours' worth of clinical replacement assignments to make up for those
12 missed days. It was not unusual to have clinical replacement assignments either for student
13 absences or when hospitals were unable to accept students in their facilities. When Do was
14 nearly finished with all the clinical replacement assignments, she was told that ASU would no
15 longer accept them. ASU now claims that this change was mandated by the AZ Nursing Board,
16 but the assignments were given to her *after* the alleged change was communicated to ASU
17 staff. This is another in a long line of shifting stories and justifications that Defendants have
18 offered for their failure and refusal to follow well-established law.

19 43. Frustrated, but still committed to her dream of becoming a nurse, Do did not
20 complain and persisted in her efforts to finish the course. Her next step would be to complete
21 more clinical hours, including ***bedside*** clinical hours.

22 44. ASU assigned Do to clinical shifts at Defendant Valleywise Health Medical
23 Center in order to make up for the work she missed. Dr. Day, a professor in Do's Master's
24 program and the charge nurse at Valleywise, was assigned to supervise the clinical.

25 45. On July 23, the night before Do's assigned shift, she was reviewing materials
26 provided by Valleywise in order to ensure strict compliance with hospital protocols. Do
27 became concerned upon reading the "Limitations Applied to All Nursing & Allied Health
28 Student Experiences" document, which stated that students are not permitted in rooms

1 requiring a N95 respirator. In one of Dr. Day's prior emails, she told Do to make sure she
 2 brought an N95 mask for each clinical shift, since there is not time to test emergency/trauma
 3 patients first to determine their COVID status.

4 46. Do emailed Dr. Day and her program director, Dr. Bednarek, at 9:44 p.m.,
 5 requesting their permission to remain in compliance with Valleywise's protocols. She
 6 explicitly noted her concern about potential exposure because she had only received one shot
 7 of the COVID vaccination due to her severe cardiac reaction. As such, this places her at a
 8 higher risk of contracting COVID than someone who is fully-vaccinated.

9 47. At 6:25 a.m. the next morning, prior to beginning her clinical shift, Do asked Dr.
 10 Day if she had had a chance to read her email. Dr. Day wears and frequently checks her smart
 11 watch, which shows notifications of emails received, and has regularly sent Do emails after 10
 12 p.m. Dr. Day yelled at Do, and asked if she had actually thought Dr. Day would have read an
 13 email sent the night before.²

14 48. Despite Dr. Day's reaction, Do remained calm and conveyed her concerns. She
 15 also expressed her wish to remain in strict compliance with all rules, because she was
 16 concerned the department was trying to lay the groundwork to have her dismissed from the
 17 Master's program due to her seeking accommodations.

18 49. Dr. Day informed Do that, despite its unequivocal language, the Valleywise rule
 19 did not apply to Do personally, said she was exempt from that rule in the operating room, and
 20 that if she refused to attend any surgery requiring N95 masks, she would not be able to make
 21 up as many clinical hours that day as she needed.

22 50. Dr. Day then assigned Do to a burn victims surgery, a potential N95 mask
 23 required area, which is kept at a temperature of over 100 degrees for patient safety and well-
 24 being. Do expressed concern that the high temperature and extended surgical time might
 25 aggravate her condition, and that she would not have easy access to her medication to control

26 ² Throughout the mandated grievance process at ASU, the University and its professors and
 27 administrators routinely communicated with Do over email, at times demanding responses
 28 immediately. This was so even though the Defendants' position was that email was inefficient
 and the highly-paid professors were simply too busy to be expected to read and respond to
 emails after 9 p.m.

1 her arrhythmias should one arise. She also reaffirmed that despite her concerns, she was
2 willing to do what she was told. In response, Dr. Day (who spent a collective 5-minutes with
3 Do), wrote a nine-page, false and defamatory negative evaluation alleging Do had complained
4 about the room being too warm.

5 51. ASU and Defendants Day and Bednarek also refused to allow Do to complete
6 her clinical hours in less than blocks of twelve-hours shifts, falsely claiming that state law
7 mandated these hours. In fact, clinical shifts for nursing students often lasted less than twelve
8 hours, especially when the ASU professors overseeing the clinical hours had personal conflicts
9 that prevented them from conveniently being present for twelve hours. The nursing packet sent
10 to Do and other nursing students before beginning the program plainly states that clinical hour
11 adjustments can be part of the accommodations provided to students with disabilities. This is
12 another example of the Defendants taking diametrically-opposed positions when doing so is
13 in their perceived interests. This is the precise opposite of taking into account a student or
14 employee's disability and providing reasonable accommodations.

15 52. Do was then reassigned to a different surgery in the trauma unit; another area
16 potentially requiring N95 masks. Do followed the instructions, despite the fact that one of her
17 other classmates was given classroom ACLS training to make up for her previous clinical
18 absence. While other students conducted routine patient checks and tests, and made small talk
19 with patients, Do's cases involved severe accident victims, including one patient who had been
20 degloved—*i.e.*, the skin and muscle on his arm had been completely pulled off, and was
21 spurting blood and surgical fluids in the operating room—and another man who had been
22 crushed by a forklift, was nonresponsive, and brought in as a "John Doe". These assignments
23 were extreme, especially for a nursing student with Do's acknowledged disability, and given
24 her years of education and experience, Dr. Day was well aware that the traumatic experience
25 would increase Do's stress level, heightening the risk of an arrhythmia episode.

26 53. Do did her best to complete the assignment, but eventually began experiencing
27 arrhythmias due to these horrific scenes. The traumatic clinical shift sent Do into tachycardiac
28 ventricular bigeminy. At 11:01 a.m., Do emailed Dr. Day to let her know that she was not

1 feeling well and specified she was having heart arrhythmia. At 11:07 a.m., she called Dr.
2 Bednarek to try to let her know about the situation, but Dr. Bednarek did not answer. At 11:30
3 a.m., she emailed Dr. Day again to let her know that she needed to leave due to aggravation of
4 her heart condition and disability.

5 54. In addition to these attempts to notify Drs. Day and Bednarek, Do informed the
6 CRNA in the surgery that she was in arrhythmia and needed to take a break and medication.
7 She then left the room, and ultimately did not return for fear of exposing contaminants into the
8 surgery after the patient's operation had begun.

9 55. After Do's departure from her clinicals on July 24, 2021, Dr. Day, Dr. Bednarek,
10 Dr. Morris, and Professor Keck submitted an extremely negative, nine-page performance
11 review. This evaluation contained numerous falsehoods, misleading and defamatory
12 statements, inconsistencies, and failed in any way to take into account that Do had left because
13 she was experiencing a medical emergency in her bout of severe arrythmia.

14 56. ASU and its personnel falsely alleged that Do: (i) abandoned her clinical
15 assignments without notice or explanation; (ii) stated she merely wanted the Master's in order
16 to be an administrator; (iii) was disinterested in her assignments; and (iv) did not meet required
17 objectives or competencies while making up her clinical hours. Over a Zoom meeting, with
18 Dr. Bednarek, Dr. Morris, and multiple other members of ASU staff present, Do was told that
19 she had exhibited "gross incompetence as a nursing student." Each and all of these statements
20 are false and defamatory. Not content to just give Do a failing grade, Defendants also wanted
21 to place a permanent stain on her academic record by publishing the false and defamatory
22 evaluation, including by sending it to the Arizona State Nursing Board. Defendants' conduct
23 in this regard is willful, malicious, and outrageous and justifies an award of punitive and
24 exemplary damages.

25 57. ASU further altered the standard evaluation form, changing the orientation of
26 the form from portrait to landscape in order to add an additional column for days Do did not
27 perform clinical work. In this extra column, Do was given even more poor evaluations for
28 *nonexistent* work days. Further, the false and defamatory evaluation includes multiple

1 statements from unidentified “witnesses” from Valleywise, whose names and identities have
2 been kept from Do. Without their names, Do is unable to identify who these individuals are.
3 And, given the small number of individuals that she interacted with on that day, it is extremely
4 unlikely that these individuals exist or gave actual information about Do. Rather, Do is
5 informed and believes, and on that basis alleges, that these false “observations” were
6 manufactured by Defendant Day, Defendant Morris, Defendant Bednarek, and Defendant
7 Keck and inserted into the evaluation for the purpose of manufacturing support for removing
8 Do from the program. Defendants had grown tired of accommodating Do’s disability, which
9 was directly caused by a shot mandated by ASU and Valleywise, and were fabricating a paper
10 trail to justify removing Do from the program.

11 58. On the basis of this false and defamatory evaluation, Do was given a failing
12 grade for the clinical course and was constructively removed from the nursing program,
13 effectively ending her dream of becoming a nurse. Worse still, this false and defamatory
14 evaluation, when combined with the failing grade, has permanently damaged Do’s name and
15 reputation and will negatively impact her for the rest of her life. Defendants’ conduct in all
16 regards was willful, malicious, and intended to harm, and did harm, Do and justify an award
17 of punitive and exemplary damages where so recoverable.

18 59. Do unsuccessfully challenged her failing grade through ASU’s formal grievance
19 process.

20 60. At each stage of that process, Defendants made up a series of inconsistent,
21 pretextual reasons for affirming the failing grade. At no point in that process did ASU
22 recognize the impact that Do’s life-altering disability—which resulted from ASU’s mandate
23 that she receive a COVID-19 vaccination—had on her ability to complete her clinicals, nor
24 the need for a reasonable accommodation to address this disability.

25 61. Do has completed each stage of the formal grievance process, and ASU formally
26 upheld the decision to issue her a failing grade and remove her from the program. Do’s claims
27 are thus ripe for adjudication in this forum.

28

1 **VI. CLAIMS**2 **FIRST CLAIM**3 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT, TITLE II**
4 **(By Plaintiff Against ASU)**

5 62. Plaintiff incorporates by reference each of the preceding paragraphs.

6 63. Under 42 U.S.C. § 12132, “no qualified individual with a disability shall, by
7 reason of such disability, be excluded from participation in or be denied the benefits of the
8 services, programs, or activities of a public entity, or be subjected to discrimination by any
9 such entity.”10 64. Do has a disability within the meaning of the ADA, 42 U.S.C. § 12102. Her
11 cardiac arrhythmia is a physical impairment that substantially limits major life activities,
12 including Do’s ability to care for herself, her mobility, manual tasks, her ability to work, and
13 her ability to complete her studies. Do’s arrhythmia significantly impacts her circulatory
14 functions.15 65. With reasonable accommodations, Do would be able to perform all of the
16 requirements of her nursing program.17 66. Under Title II of the ADA, Defendant ASU is a public entity. *See* 42 U.S.C. §
18 12131(1)(B).19 67. Plaintiff has an ongoing and severe disability on the basis of what appears to be
20 permanent heart damage she sustained after receiving the COVID-19 vaccine as required by
21 ASU.22 68. Defendant ASU has violated Title II of the ADA by failing to provide reasonable
23 accommodations to Plaintiff; altering Plaintiff’s schedules and requirements to prevent her
24 from completing her program on the basis of her disability and retaliating against her for
25 seeking accommodations; denying her the benefit of the advanced degree she was in the
26 process of earning; and constructively removing her from the Master’s of Nursing program as
27 a result of the disability she suffered as a result of ASU’s own vaccination requirements.

28

1 69. ASU was fully aware of Plaintiff's disability, as evidenced by her successful
2 request to the ASU Student Accessibility and Inclusive Learning Services Center for
3 accommodations and through her numerous written and oral communications with her
4 professors and other ASU administrators. With this knowledge, ASU's actions, including
5 those by and through its professors and administrators, against Plaintiff were intentional or
6 taken with deliberate indifference to Plaintiff's federally protected rights.

7 70. Pursuant to 42 U.S.C. § 12133, and the remedies, procedures, and rights set forth
8 in 29 U.S.C. § 794a incorporated therein, Plaintiff prays for judgment as set forth below.

SECOND CLAIM

VIOLATION OF THE AMERICANS WITH DISABILITIES ACT, TITLE II

(By Plaintiff Against Valleywise Health Medical Center and Valleywise Health)

12 71. Plaintiff incorporates by reference each of the preceding paragraphs.

13 72. Under Title II of the ADA, Valleywise Health is a public entity. *See* 42 U.S.C.
14 § 12131(1)(B).

15 73. Plaintiff has an ongoing and severe disability on the basis of what appears to be
16 permanent heart damage she sustained after receiving the COVID-19 vaccine so that she could
17 conduct clinical work for Defendant Valleywise Health.

18 74. Defendant Valleywise Health violated Title II of the ADA by failing to operate
19 its services on a nondiscriminatory basis; failing to ensure that individuals with disabilities are
20 properly accommodated on site and in clinical work for Defendant Valleywise Health; and
21 failure to ensure that its agents and supervisors, including Dr. Day, were trained proficiently
22 to supervise, educate, and accommodate individuals with disabilities who were participating
23 in their programs. Valleywise Health discriminated against Do by giving her difficult and
24 highly-stressful assignments not given to other students, and by issuing her a false and
25 defamatory performance evaluation, resulting in Plaintiff's constructive removal from her
26 nursing program and permanent inability to continue clinicals at Valleywise Health.

75. Valleywise Health, in addition to ASU, was responsible for the supervision and arrangement of Plaintiff's clinical requirements. As a result of disparate treatment due to her

1 disability, Plaintiff was prevented from gaining the same practical experience and degree as
2 her classmates.

3 76. Valleywise Health was aware of Plaintiff's disability through Dr. Day, an
4 admitted agent of both ASU and Valleywise with direct knowledge of Plaintiff's disability.
5 Despite awareness of the disability, Valleywise refused to place Plaintiff in working
6 environments that were better suited to her condition while still fulfilling her program
7 requirements. Such alternatives were readily available, and utilized for Plaintiff's non-disabled
8 classmates.

9 77. Pursuant to 42 U.S.C. § 12133, and the remedies, procedures, and rights set forth
10 in 29 U.S.C. § 794a incorporated therein, Plaintiff prays for judgment as set forth below.

11 **THIRD CLAIM**

12 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT, TITLE IV**

13 **(By Plaintiff Against All Defendants)**

14 78. Plaintiff incorporates by reference each of the preceding paragraphs.

15 79. Under 42 U.S.C. § 12203(b), "It shall be unlawful to coerce, intimidate, threaten,
16 or interfere with any individual in the exercise or enjoyment of, or on account of his or her
17 having exercised or enjoyed, or on account of his or her having aided or encouraged any other
18 individual in the exercise or enjoyment of, any right granted or protected by this chapter."

19 80. As a result of Plaintiff's attempt to exercise her rights, as guaranteed under Title
20 II as to ASU and Valleywise Health, Plaintiff was coerced, interfered with, and intimidated by
21 Defendants and their agents.

22 81. As noted above, when Plaintiff requested reasonable accommodations for her
23 known and documented disability, ASU and Valleywise Health actively placed her on clinical
24 duty in areas unsuitable for Plaintiff when safer alternative assignments were available;
25 negatively impacted her education and reputation by diminishing her disability, concerns, and
26 needs; lied to her about safety protocols to force her onto duty when she knew it was unsafe;
27 made false allegations against her in a pretextual and defamatory performance evaluation; and
28 constructively removed her from her Master's program on a pretextual basis due to their

1 unwillingness to accommodate Plaintiff's disability as she is entitled under Titles II and III of
2 the ADA.

3 82. Defendants took these actions intentionally or with deliberate indifference to
4 Plaintiff's federally-protected rights.

5 83. Pursuant to the remedies, procedures, and rights set forth in 29 U.S.C. § 794a
6 incorporated therein, Plaintiff prays for judgment as set forth below.

7 **FOURTH CLAIM**

8 **VIOLATION OF THE ARIZONANS WITH DISABILITIES ACT**

9 **A.R.S. § 41-1492.02**

10 **(By Plaintiff Against ASU)**

11 84. Plaintiff incorporates by reference each of the preceding paragraphs.

12 85. Under A.R.S. § 41-1492.02 ("AzDA"), "No individual may be discriminated
13 against on the basis of disability in the full and equal enjoyment of the goods, services,
14 facilities, privileges, advantages or accommodations of any place of public accommodation by
15 any person who owns, leases, leases to others or operates a place of public accommodation."

16 86. ASU is a "public accommodation" within the meaning off the AzDA as an
17 "undergraduate or postgraduate private school or other place of education." *See* A.R.S. § 41-
18 1492(11)(j).

19 87. ASU is a "person" under the terms of the AzDA. *See* A.R.S. § 49-961.

20 88. Plaintiff was discriminated against by Defendant ASU on the basis of her
21 disability, as detailed in her ADA Title II claim. She realleges these facts as the basis of this
22 claim.

23 89. Defendant ASU took these actions intentionally or with deliberate indifference
24 to Plaintiff's federally protected rights.

25 90. Pursuant to the remedies, procedures, and rights set forth in A.R.S. § 41-1492.08
26 incorporated therein, Plaintiff prays for judgment as set forth below.

FIFTH CLAIM

VIOLATION OF THE ARIZONANS WITH DISABILITIES ACT

A.R.S. § 41-1492.02

(By Plaintiff Against Valleywise Health)

91. Plaintiff incorporates by reference each of the preceding paragraphs.

92. Under A.R.S. § 41-1492.02, “No individual may be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation by any person who owns, leases, leases to others or operates a place of public accommodation.”

93. Valleywise Health is a “public accommodation” within the meaning of the AzDA. Public accommodation includes any “professional office of a health care provider, hospital or other service establishment.” A.R.S. § 41-1492(11)(f).

94. Valleywise Health is a “person” under the terms of the AzDA. *See A.R.S. § 49-961.*

95. Plaintiff was discriminated against by Defendant Valleywise Health on the basis of her disability, as detailed in her ADA Title II claim. She realleges these facts as the basis of this claim.

96. Defendant Valleywise Health took these actions intentionally or with deliberate indifference to Plaintiff's federally protected rights.

97. Pursuant to the remedies, procedures, and rights set forth in A.R.S. § 41-1492.08 incorporated therein, Plaintiff prays for judgment as set forth below.

SIXTH CLAIM

VIOLATION OF REHABILITATION ACT

(By Plaintiff Against All Defendants)

98. Plaintiff incorporates by reference each of the preceding paragraphs.

99. Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794 (“Section 504”) states that “No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the

1 benefits of, or be subjected to discrimination under any program or activity receiving Federal
2 financial assistance..."

3 100. Defendants ASU and Valleywise Health each receive federal financial assistance
4 and are consequently subject to Section 504.

5 101. Defendants have each violated Section 504 by failing to operate their services,
6 program, and activities on a nondiscriminatory, safe basis; failing to ensure that personnel,
7 staff, and other agents were proficiently trained to handle students/clinical workers with
8 disabilities and to provide such students with appropriate accommodations; and wrongful
9 exclusion of Plaintiff, a disabled individual, from her Master's program on the basis of her
10 disability.

11 102. Pursuant to the remedies, procedures, and rights set forth in 29 U.S.C. § 794a,
12 Plaintiff prays for judgment as set forth below.

13 **SEVENTH CLAIM**

14 **INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS**

15 **(By Plaintiff Against All Defendants)**

16 103. Plaintiff incorporates by reference each of the preceding paragraphs.

17 104. Defendants' conduct towards Plaintiff was extreme and outrageous. Defendants'
18 failure to accommodate Plaintiff's needs on the basis of her disability, which she only has
19 because of vaccination requirements that Defendants imposed upon her, is atrocious and
20 inexcusable. Defendants actively placed Plaintiff in situations designed to aggravate her
21 known heart condition, when safe alternatives were available and utilized for her classmates.
22 This is conduct beyond the bounds of decency.

23 105. Defendants intended to cause Plaintiff emotional distress by placing her in
24 situations they knew would, or were substantially likely to, trigger her potentially life-
25 threatening heart arrhythmias, as well as by causing her removal from her nursing program.
26 Further, even if Defendants' treatment of Plaintiff would not certainly trigger an arrhythmia
27 episode, it was a near certainty that the stress of being in a situation with a high likelihood of
28 triggering an episode would cause her emotional distress.

1 106. Plaintiff suffered intense, severe, and pervasive emotional distress as a result of
2 Defendants' actions. Because Defendants acted to exacerbate Plaintiff's disability, Plaintiff
3 experienced potentially-fatal cardiac episodes, was pretextually dismissed from her Master's
4 program, and has been in therapy in order to handle the lingering distress from these incidents.

5 107. Plaintiff prays for judgment as set forth below.

EIGHTH CLAIM

NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS

(By Plaintiff Against All Defendants)

9 108. Plaintiff incorporates by reference each of the preceding paragraphs.

10 109. In the alternative, Defendants were negligent in giving Plaintiff assignments
11 which exacerbated her known disability. As a result of Defendants' treatment, Plaintiff
12 experienced potentially life-threatening cardiac arrhythmias and debilitating anxiety as a result
13 of extreme emotional distress.

14 110. Defendants should have realized their conduct involved an unreasonable risk of
15 causing emotional distress. Defendants were aware that Plaintiff's heart condition makes her
16 more susceptible to medical episodes and stress than a non-disabled student, yet still placed
17 her on duty in a Level I Trauma ward and in areas of the hospital where she was at higher risk
18 of contracting COVID-19.

19 111. Defendants were aware of Plaintiff's disability and the likelihood that strenuous
20 and distressing situations could result in potentially fatal bodily harm as a result of her heart
21 condition.

22 112. Plaintiff prays for judgment as set forth below.

NINTH CLAIM

NEGLIGENCE

(By Plaintiff Against Defendants ASU, Day, and Bednarek)

26 113. Plaintiff incorporates by reference each of the preceding paragraphs.

27 114. Defendants owed the Plaintiff a duty of care by way of their student-school
28 relationship. This extends to a duty to protect students from sustaining injury during on-

1 campus activities and while attending classes.

2 115. Defendants refused Plaintiff's request for reasonable accommodations, such as
 3 the ability to attend class and take exams remotely, and to participate in clinical assignments
 4 less likely to trigger cardiac arrhythmia. Defendants were aware that these accommodation
 5 requests were due to Plaintiff's heart condition, which has rendered her unable to safely travel
 6 by car, oftentimes even as a passenger, and which is triggered by stressful and upsetting
 7 situations. Defendants' failure to protect Plaintiff was a breach of their duty.

8 116. As a direct and proximate result of this failure to accommodate, Plaintiff suffered
 9 massive cardiac episodes while traveling to and/or from campus to take exams and attend her
 10 classes, and in her clinical classes themselves. Plaintiff thus suffered significant economic
 11 damages and severe emotional distress.

12 117. Plaintiff prays for judgment as set forth below.

13 **TENTH CLAIM**

14 **DEFAMATION**

15 **(By Plaintiff Against Defendants ASU, Day, Bednarek, Morris, and Keck)**

16 118. Plaintiff incorporates by reference each of the preceding paragraphs.

17 119. Following Plaintiff's repeated requests for reasonable accommodations of her
 18 disability, Defendants wrote and published a defamatory performance review containing false
 19 accounts of Plaintiff's performance within her classes and clinical work.

20 120. This performance review was published when it was sent to a third party,
 21 including ASU, its professors and administrators, and Valleywise.

22 121. The statements contained in the evaluation were false and/or framed in a
 23 misleading manner in order to harm Plaintiff's reputation, impeach Plaintiff's integrity,
 24 disrepute her academic success, and ridicule her simple requests for accommodation of a
 25 serious medical disability.

26 122. Plaintiff was injured by the defamatory statements by receiving a failing grade
 27 and being constructively removed from her nursing program. Further, the reputational and
 28 other damage caused by Defendants' conduct will undoubtedly stay with Plaintiff throughout

1 her life.

2 123. Defendants' forgoing acts were intentional, fraudulent, and malicious and
 3 oppressive. As a result, they justify an award of punitive and exemplary damages where
 4 allowed by law.

5 124. Plaintiff prays for judgment as set forth below.

6 **ELEVENTH CLAIM**

7 **BREACH OF CONTRACT**

8 **(By Plaintiff Against Defendant ASU)**

9 125. Plaintiff incorporates by reference each of the preceding paragraphs.

10 126. In Fall 2020, Plaintiff enrolled, paid for, and began attending ASU. Under the
 11 terms of Plaintiff's enrollment with ASU, she would pay between \$9,054-\$12,143 for tuition
 12 per semester and register for enough class units to constitute continuous enrollment. In
 13 exchange, ASU would provide education and guidance towards Plaintiff earning a degree.

14 127. Further, ASU made additional promises in its promotional materials and guides
 15 issued to Students. In the Master of Science in Nursing Degree Handbook that ASU provided
 16 to Plaintiff, ASU states that it will assign each student a faculty mentor. On the ASU website,
 17 the course page for this degree states that "the master's in nursing program offers flexible
 18 preceptorships and coursework to provide each student with a learning experience that meets
 19 their needs."

20 128. While Plaintiff performed fully her obligations under the contract, ASU (i) never
 21 assigned her a faculty mentor; (ii) failed to provide reasonable accommodations to Plaintiff
 22 after assuring her they would; (iii) acted maliciously in creating barriers to Plaintiff's
 23 completion of her Master's degree; and (iv) falsified Plaintiff's performance evaluation in
 24 order to justify her constructive removal from the program. This conduct was a breach of the
 25 terms of Do's contract with ASU and unreasonably and intentionally deprived Do of the
 26 benefit of the bargain.

27 129. Because of Defendant's breach, Plaintiff has been denied the right to complete
 28 the degree she was on track to earn, as well as the expected annual salary of \$150,000-

1 \$300,000 which would accompany it.

2 **TWELFTH CLAIM**

3 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

4 **(By Plaintiff Against Defendant ASU)**

5 130. Plaintiff incorporates by reference each of the preceding paragraphs.

6 131. Every contract in Arizona contains an implied covenant of good faith and fair
7 dealing, which prevents a party from taking action to unfairly interfere with the right of another
8 to receive the benefits of the contract.

9 132. Plaintiff entered into a valid, enforceable contract upon her enrollment at ASU
10 in Fall 2020.

11 133. Plaintiff performed all of her required duties under the contract.

12 134. ASU unfairly interfered with Plaintiff's right to receive the benefits of the
13 contract when it (i) never assigned her a faculty mentor; (ii) failed to provide reasonable
14 accommodations to Plaintiff after assuring her they would; (iii) acted maliciously in creating
15 barriers to Plaintiff's completion of her Master's degree; and (iv) falsified Plaintiff's
16 performance evaluation in order to justify her constructive removal from the program. ASU
17 intentionally sought to deprive Plaintiff of her rights under the parties' contract.

18 135. The actions of ASU were taken in bad faith.

19 136. As a direct and proximate result of ASU's conduct, Plaintiff has been denied the
20 right to complete the degree she was on track to earn, as well as the expected annual salary of
21 \$150,000-\$300,000 which would accompany it.

22 137. The bad faith conduct of ASU was a substantial factor in causing this harm.

23 **DEMAND FOR JURY TRIAL**

24 Plaintiff hereby demands a jury trial for each cause of action so triable.

25 **VII. PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff seeks relief from this Court in the following respects:

27 A. For compensatory damages according to proof, but no less than \$15 million;
28 B. For punitive damages on account of Defendant's willful, intentional, malicious,

1 and oppressive conduct and in an amount to deter this conduct from being repeated;

2 C. For injunctive relief, including an order to reinstate Plaintiff to the Master of
3 Science in Nursing Program at Arizona State University, to rescind the false and defamatory
4 evaluation and failing grade, and to provide her with reasonable accommodations;

5 D. For costs of suit incurred herein;

6 E. For attorneys' fees on causes of action where fees are available by law, including
7 under the ADA, AzDA, and the Rehabilitation Act;

8 F. For prejudgment and post-judgment interest as available by law; and

9 G. For such other and further relief as this Court may deem just and proper.

10 Dated: February 3, 2022.

BEYERS FARRELL PLLC

11 By /s/ Michael J. Farrell

12 Michael J. Farrell
13 99 East Virginia Ave., Suite 220
14 Phoenix, AZ 85004-1195

15 David W. Affeld, CA SBN 123922
16 (Pro Hac Vice Application Forthcoming)
17 AFFELD GRIVAKES LLP
18 2049 Century Park East, Suite 2460
19 Los Angeles, California 90067

20
21
22
23
24
25
26
27
28

20 Attorneys for Plaintiff, Sara Do